

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
David C. Boyd
Marshall Johnson
Thomas Pugh
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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of the Minnesota
Department of Commerce for a Declaratory
Ruling Regarding Qwest Corporation's
Compliance with Disconnection Statutes

ISSUE DATE: August 10, 2007

DOCKET NO. P-421/M-07-35

ORDER DECLINING DECLARATORY
RULING

PROCEDURAL HISTORY

On March 20, 2007, the Minnesota Department of Commerce (the Department) asked the Commission to issue an order identifying the statutes that govern the authority of Qwest Corporation (Qwest) to disconnect service with telecommunications service providers that provide interexchange service (interexchange carriers or IXC's).

On April 9, 2007, the Commission solicited comments on substantive and procedural issues raised by the Department's request.

On April 30, 2007, Qwest asked the Commission to rule on the statutory question raised by the Department, and argued that Minnesota Statute § 237.12 does not apply.

On May 10, 2007, the Department again asked the Commission to rule on the statutory question, but argued that § 237.12 does apply.

The Commission met on July 26, 2007, to consider this matter.

FINDINGS AND CONCLUSIONS

I. Background

From 2002 to 2006 Qwest acknowledges disconnecting service to IXC's 158 times, the great majority without prior Commission approval. While most of these disconnections occurred at the IXC's request, the Department stated its intention to bring a complaint with respect to the disputed disconnection of six IXC's.

II. Positions of the Parties

In brief, the Department argues that Qwest must first seek Commission approval before disconnecting services to an IXC. In support of this assertion the Department cites Minnesota Statutes § 237.12, which states in relevant part:

Subp. 2. **Discontinuance.** Wherever a physical connection or connections exist between any telephone exchange system operated by a telephone company and the toll line or lines operated by another telephone company or between its toll line or lines and the telephone exchange system of another telephone company, or between its toll line and the toll line of another telephone company, *neither of the companies shall cause such connection to be severed or the service between the companies to be discontinued without first obtaining an order from the commission upon an application for permission to discontinue such physical connection.* Upon the filing of an application for discontinuance of such a connection, the department shall investigate and ascertain whether public convenience requires the continuance of such physical connection, and if the department so finds, the commission shall fix the compensation, terms and conditions of the continuance of the physical connection and service between the telephone companies.

(Emphasis added.)

In brief, Qwest argues that there are circumstances under which it may disconnect IXCs without prior Commission approval. In support of this assertion Qwest cites Minnesota Statutes § 237.47, which states in relevant parts:

Subd. 6. **Tariff or price list change.** (a) Telecommunications carriers may: (1) decrease the rate for a service, or make any change in a tariff or price list that results in a decrease in rates, effective without notice to its customers or the commission; and (2) offer a new service, increase the rate for a service, or change the terms, conditions, rules, and regulations of its service offering effective upon notice to its customers. Subject to subdivisions 2 and 9, a telecommunications carrier may discontinue a service, *except that a telecommunications carrier must first obtain prior commission approval before discontinuing service to another telecommunications carrier if end users would be deprived of service because of the discontinuance.*

* * *

Subd. 9. **Discontinuance.** If a physical connection exists between a telephone exchange system operated by a telephone company and the toll line or lines operated by a telecommunications carrier, *neither of the companies shall have the connection severed or the service between the companies discontinued without first obtaining an order from the commission upon an application for permission to discontinue the physical connection.* Upon the filing of an application for

discontinuance of the connection, the department shall investigate and ascertain whether public convenience requires the continuance of the physical connection, and if the department so finds, the commission shall fix the compensation, terms, and conditions of the continuance of the physical connection and service between the telephone company and the telecommunications carrier. *Prior commission approval is not required for severing connections where multiple local exchange companies are authorized to provide service. However, the commission may require the connections if it finds that the connections are in the public interest.*

(Emphasis added.)

In sum, the parties disagree about which statute applies. The Department asks for an advisory opinion that Minnesota Statutes § 237.12 governs, whereas Qwest asks for an opinion that this statute does not govern.

III. Commission Analysis and Action

The Commission disfavours issuing advisory opinions, finding it wiser to rule on the specific facts and circumstances presented in a fully developed record. As the Commission has explained previously:

[T]he Commission generally declines to give advisory opinions for the same reasons the courts do: to conserve the resources of the Commission and all parties, to ensure the integrity and rigor of its decision making processes, to exercise its quasi-judicial powers with the restraint those powers demand.

Advisory opinions of the kind sought here force parties to spend resources addressing issues that may never really be in dispute. This is not only a misuse of resources; it is inequitable to the parties who have already prevailed. Worse, it creates the danger that issues decided “just in case” will not benefit from the full development and vigorous advocacy essential to sound decision making. Finally, it is inconsistent with the basic precept that judicial (and quasi-judicial) power is to be exercised only to the extent necessary to resolve actual conflicts amenable to judicial (and quasi-judicial) resolution.¹

¹ *In the Matter of the Petition of Inland Steel Mining Company and Northern Electric Cooperative Association for Approval of the Purchase and Sale of Electricity at Retail*, Docket No. E-130/SA-95-1262, ORDER DENYING RECONSIDERATION (October 25, 1996) at 5. See also *In the Matter of a Commission Investigation into ILEC Unbundling Obligations as a Result of the FCC Triennial Review Order*, Docket No. P-999/CI-03-961, ORDER RESUMING EVIDENTIARY PROCEEDING (April 21, 2004); *In the Matter of Qwest Corporation’s Alternative Form of Regulation (AFOR) Plan*, Docket No. P-421/AR-97-1544, ORDER ON RECONSIDERATION (January 20, 2006). Cf. *In the Matter of the Application of Northern States Power Company for Authority to Increase Its Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-92-1185, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (September 29, 1993).

The Department plans to bring specific complaints regarding the disconnection of specific IXCs under specific circumstances. This will provide the Commission with a context in which to evaluate the legal issues presented by the parties. Consistent with longstanding Commission practice, the Commission will address this matter there.

Consequently, the Department's request for an advisory opinion will be denied.

ORDER

1. The Department's request for an advisory opinion is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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